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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6082 OF 2005

Dr. P.S. Chaudhari ... Petitioner

Vs.

Ikbal Kasam Khan ... Respondent

Mr. Rajesh Kachre for the petitioner.

Mr. K.M. Shah for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 13TH SEPTEMBER, 2005.

P.C.:-

1. In this petition, order dated 4/8/2005 passed by the City Civil Court at Bombay in Summons for Judgment No.261 of 2005 in Summary Suit No.1425 of 2005 is under challenge. By the impugned order, the defendant has been granted leave to defend upon the defendant depositing a sum of Rs.50,000/- on or before 12/9/2005.

2. I have heard the learned counsel appearing for the parties. The learned counsel for the petitioner contended that the amount of Rs.50,000/- was never given by the plaintiff to the defendant. He submitted that in fact, the defendant had lost certain cheque books somewhere in the year 2001 and a complaint to that effect was filed with the Juhu Police Station. What is, therefore, tried to be suggested is that the signature on the cheque in question is forged. I asked the learned

counsel to take me to the affidavit filed by the defendant in the trial court to find out whether this fact was averred in the affidavit. Conspicuously, the reference to the alleged complaint lodged with the Juhu Police Station is absent in the said affidavit. It was improper on the part of the petitioner-defendant to annex a document purporting to be a document from the Juhu Police Station in this petition, for the first time, and advance submission on the basis thereof. Another submission of the learned counsel is that the account was closed somewhere in the year 2004 and, there was no occasion for the defendant to give a cheque to the plaintiff on 5/2/2005. As to why this cheque was given can only be decided at the trial of the suit. But it could also be that having closed the account in 2004, because no amount could be recovered by the plaintiff by presenting the cheque, the cheque might have been given by the defendant. However, on this aspect, I do not want to express any final opinion at this stage. The trial court cannot be faulted for passing the conditional order of deposit. No substance in the petition. Petition is rejected.

(SMT. RANJANA DESAI, J.)